



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;

AND IN THE MATTER OF the complaint by Ellen Anderson dated December 6, 1994 and the complaint by Lucia M. O'Neill dated September 14, 1995, alleging discrimination in the provision of services on the basis of sex.

B E T W E E N:

Ontario Human Rights Commission

Commission

And

Ellen Anderson and Lucia O'Neill

Complainants

- and -

The YMCA of Barrie

Respondent

DECISION

Adjudicator: Heather M. MacNaughton

Date: December 6, 2000

Board File Nos: BI-0264/99 and BI-0265/99

Decision No: 00-020

Board of Inquiry (*Human Rights Code*)
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A P P E A R A N C E S

Ontario Human Rights Commission)	Naomi Overend, Counsel
)	
Ellen Anderson)	
<i>Complainant</i>)	On her own behalf
)	
Lucia O'Neill)	
<i>Complainant</i>)	On her own behalf
)	
The YMCA of Barrie)	
<i>Respondent</i>)	John Anderson, Counsel
)	

THE COMPLAINTS

Ellen Anderson and Lucia O'Neill were both members of the YMCA in Barrie, Ontario. On December 6, 1994 Ms. Anderson filed a complaint with the Ontario Human Rights Commission alleging discrimination on the basis of sex. Ms Anderson's complaint concerns a category of premium membership that is available to men and not women. She alleges that in providing this differential category of membership the Barrie YMCA is discriminating in the provision of services in breach of the Ontario *Human Rights Code* R.S.O. 1990, c. H. 19 as amended (the "Code").

Lucia O'Neill filed a separate complaint, dated September 14, 1995 (incorporating a letter dated December 3, 1994), which raises concerns about the premium membership, and also the inadequacies of the change facilities for women and girls.

THE HEARING

The hearing commenced before me in September of 1999, when I attended at the Barrie YMCA in order to view the premises. The view was video recorded and the tape was subsequently entered as an exhibit in the hearing. Each of the complainants testified and the Respondent called as witnesses Mimi Price, the Director of the Barrie YMCA and James Cummerford, the Chief Executive Officer. I heard evidence on January 17-20, 2000. Further hearing dates were adjourned because the parties were exploring the possibility of a resolution. The hearing reconvened on November 16 and 17, 2000.

THE FACTS

As I heard the evidence it became readily apparent that the relevant facts were not in dispute and on November 17, 2000 I was advised that the parties would agree to a statement of facts which is set out herein.

The Barrie YMCA offers a premium category of membership to men that is not available to women. It is that premium category of membership, currently called "Membership Plus", that is at the heart of these complaints. It has been available since 1978 and was previously called the Men's Fitness Centre and, before that, the Men's Health Club.

Men who pay the Membership Plus premium are entitled to use a separate change facility which has many amenities not enjoyed by regular members. These amenities include a whirlpool, steam room, fitness equipment within the change area, unlimited towel service, controlled access and a favourable member-to-change-room-size ratio.

There is no comparable facility for women. Women are not offered a premium membership. Unlike men who have two "tiers" of membership to chose from, women can become only regular members of the Barrie YMCA.

After the commencement of the hearing this year, the Barrie YMCA met with architectural consultants, and has developed draft plans for a women's Membership Plus change facility. It has stated its intention to make changes to the men's Membership Plus area to ensure parity between the facilities. It is anticipated that construction on these facilities will be completed by September 1, 2001.

I find that the facilities that exist at the Barrie YMCA constitute an infringement of the Complainants' rights under section 1 of the *Code*. The Barrie YMCA has waived its right to assert any defence under the *Code*.

The parties have consented to the following order arising from the breach of Ms Anderson and Ms O'Neill's rights.

ORDER

This Board shall remain seized of this matter until the completion of construction, described in the paragraphs below, to provide guidance and make any necessary supplementary orders. The parties will make all efforts to resolve any differences between themselves before asking the Board for guidance. All future matters before this Board will take place by telephone conference call or in writing, unless otherwise directed by this Board.

The Barrie YMCA will build a women's membership plus change facility, comparable in size and amenities to its revised men's membership plus facilities. The parties shall have the right to review the plans for these facilities, and forward any concerns about the parity of the facilities to this Board.

The Barrie YMCA agrees to the following timetable: (1) plans for the men's and women's plus facilities finalized by December 31, 2000; (2) tender process completed and contractor chosen by March 15, 2001; (3) construction completed by September 1, 2001. The parties can ask this Board to reconvene if there is any failure to comply with the above timetable. The Board can make such further order as it deems necessary to ensure that construction is completed in a timely fashion.

The Barrie YMCA shall report to the parties monthly with respect to the progress of the construction, until the construction is completed. This report will be made no later than by the end of each month.

The Barrie YMCA shall pay to Ms Anderson the sum of \$10,000 (ten thousand dollars) as general damages for the breach of her rights under the *Code*.

The Barrie YMCA shall pay Ms O'Neill the sum of \$8,000 (eight thousand dollars) as general damages for the breach of her rights under the *Code*.

The Barrie YMCA shall communicate this decision to the membership by posting a copy of it on the Community bulletin board, located at the Key Desk, until the completion of the women's membership plus facility. It shall post a copy of this decision on the bulletin boards located inside the women's, girls', men's and men's plus locker rooms, and on the bulletin board outside the conditioning room until April 1, 2001. In addition, the Barrie YMCA shall publish a synopsis of the decision in the membership newsletter. The above communication shall be in a manner agreed to by the parties.

Dated at Vancouver, this 6th day of December, 2000

Heather M. MacNaughton
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